PATENT COOPERATION TREATY

TO:			PCT		
see form PCT/ISA/220			WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43 <i>bis</i> .1)		
			Date of mailing (day/month/year)	see form PCT/ISA/210 (second sheet)	
Applicant's or agent's file see form PCT/ISA/22			FOR FURTHER ACTION See paragraph 2 below		
International application N PCT/EP2004/001208		International filing date (d	day/month/year)	Priority date (day/month/year) 13.02.2003	
International Patent Class A61K31/60, A61K31	sification (IPC) or /519, A61K31/	both national classification 4184, A61P9/00	and IPC		
Applicant		RNATIONAL GMBH	S CO. KG		
1. This opinion co ☑ Box No. I ☑ Box No. II	ontains indicati Basis of the operation	ons relating to the foll	owing items:		
⊠ Box No. III	Non-establish	ment of opinion with req	ard to novelty, inver	ntive step and industrial applicability	
☐ Box No. IV	Lack of unity of		•		
⊠ Box No. V	Resconed state	tement under Rule 43 <i>bi.</i> itations and explanation	s.1(a)(i) with regard s supporting such s	to novelty, inventive step or industrial tatement	
☑ Box No. VI	Certain docum	nents cited			
☐ Box No. VII	Certain defect	s in the international ap	olication		
☐ Box No. VIII	Certain observ	vations on the internatio	nal application		
2. FURTHER ACT	ION				
If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notifed the International Bureau under Rule 66.1 bis(b) that written opinions of this International Searching Authority will not be so considered.					
	EA a written rep e date of mailing	lu tagathar Whara anni	annate with amenic	ne IPEA, the applicant is invited to ments, before the expiration of three on of 22 months from the priority date,	
For further optic	ons, see Form P	CT/ISA/220.			
3. For further deta	ils, see notes to	Form PCT/ISA/220.			
			Authorized Officer		

Name and mailing address of the ISA:

European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas

Leherte, C



WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

4. Additional comments:

International application No. PCT/EP2004/001208

_	Box		
١.	the la	ang	gard to the language , this opinion has been established on the basis of the international application in guage in which it was field, unless otherwise indicated under this item.
		lan (ur	is opinion has been established on the basis of a translation from the original language into the following guage , which is the language of a translation furnished for the purposes of international search address 12.3 and 23.1(b)).
2.	With	re ess	gard to any nucleotide and/or amino acid sequence disclosed in the international application and ary to the claimed invention, this opinion has been established on the basis of:
	a. ty	ре	of material:
	· [כ	a sequence listing
		3	table(s) related to the sequence listing
	b. fo	rm	at of material:
	C	כ	in written format
			in computer readable form
	c. tir	me	of filing/furnishing:
			contained in the international application as filed.
	E		filed together with the international application in computer readable form.
	ב		furnished subsequently to this Authority for the purposes of search.
3.		ha co	addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto is been filed or furnished, the required statements that the information in the subsequent or additional spies is identical to that in the application as filed or does not go beyond the application as filed, as opropriate, were furnished.

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/001208

_	Box	No. II	Priority
— 1.	<u> </u>		lowing document has not been furnished:
		\boxtimes	copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
			translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).
		Consec	quently it has not been possible to consider the validity of the priority claim. This opinion has leless been established on the assumption that the relevant date is the claimed priority date.
2.	0	has be	pinion has been established as if no priority had been claimed due to the fact that the priority claim en found invalid (Rules 43 <i>bis</i> .1 and 64.1). Thus for the purposes of this opinion, the international attendicated above is considered to be the relevant date.
3.	Add	ditional c	observations, if necessary:

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No. PCT/EP2004/001208

_	Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability						
т	be guestions whet	her the claimed in dustrially applica	nven ble t	tion appears to be novel, to involve an inventive step (to be non nave not been examined in respect of:			
	the entire interr	national application	on,				
×	l claims Nos. 1-3	claims Nos. 1-3, 5					
b	because:						
⊠	the said international application, or the said claims Nos. 1, 2 (with respect to industrial applicability) relate to the following subject matter which does not require an international preliminary examination (specify):						
	see separate s	sheet					
	the description, claims or drawings (indicate particular elements below) or said claims Nos. are so unclear that no meaningful opinion could be formed (specify):						
	the claims, or s could be forme	the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.					
Σ	no internationa (all partially)	no international search report has been established for the whole application or for said claims Nos. 1, 3, 5 (all partially)					
	the nucleotide C of the Admir	with the atondard provided for in Anne					
	the written form	n		has not been furnished			
				does not comply with the standard			
	the computer r	eadable form		has not been furnished			
				does not comply with the standard			
C	the tables relained to	the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.					
[☐ See separate	sheet for further o	detai	Is			

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or Box No. V industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Yes: Claims

1-6

No: Claims

Inventive step (IS)

Yes: Claims

1-6 Claims No:

Industrial applicability (IA)

Yes: Claims

No: Claims

see seperate sheet

2. Citations and explanations

see separate sheet

Certain documents cited Box No. VI

1. Certain published documents (Rules 43bis.1 and 70.10)

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

and / or

PCT/EP2004/001208

Re Item III.

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

- 1) Claims 1 and 2 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).
- 2) Claims 1, 3 and 5 encompass a genus of compounds defined only by their function ("angiotensin II antagonist"), wherein the relationship between the structural features of the members of the genus and said function have not been defined. In the absence of such a relationship either disclosed in the as-filed application or which would have been recognized based upon information readily available to one skilled in the art, the skilled artisan would not know how to make and use compounds that lack structural definition. The fact that one could have assayed a compound of interest using the claimed assays does not overcome this defect since one would have no knowledge beforehand as to whether or not any given compound (other than those that might be particularly disclosed in an application) would fall within the scope of what is claimed. It would require undue experimentation (be an undue burden) to randomly screen undefined compounds for the claimed activity.

The claims cover all combinations of angiotensin II antagonist with dipyridamole and aspirin, whereas the application provides support and/or disclosure within the meaning of Article 6 PCT for only one such combinations, namely: dipyridamole in combination with acetylsalicylic acid and telmisartan.

In the present case, the claims so lack support, and the application so lacks disclosure, that a meaningful search over the whole of the claimed scope is impossible. Consequently, the search has been carried out for those parts of the claims which appear to be clear, supported and disclosed, namely those parts relating to the pharmaceutical composition, containing dipyridamole in combination with acetylsalicylic acid and telmisartan.

No opinion will be given in respect of subject-matter which is not covered by the search report (Rule 66.1(e) PCT).

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3) INVENTIVE STEP

The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 1-6 does not involve an inventive step in the sense of Article 33(3)PCT.

The problem to be solved by the present application is the provision of a medicament for the prevention of stroke or reducing the risk of stroke.

The solution proposed by the applicant is a medicament containing dipyridamole in combination with acetylsalicylic acid (ASA) and an angiotensin II antagonist,

Documents D1 discloses the use of AT II antagonists in the manufacture of a medicament for the prevention of stroke.

Document D2, D3 and D4 show that Aggrenox(R) (extended-release dipyridamole and aspirin in combination) are used for the prevention of stroke.

The use of a combination of two or more active ingredients with known identical therapeutic use can only be considered as inventive when a surprising effect, an unexpected high synergistic effect or reduced side effects for example, can be assigned in relation to the claimed therapeutic use. In this respect, the present application lacks supportive evidence.

Re Item V.

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Attention is drawn to the fact that the present statement expressed as to novelty, inventive step and industrial applicability refers only to matter for which an International Search Report has been drawn up (i.e. only for pharmaceutical compositions, containing dipyridamole in combination with acetylsalicylic acid and telmisartan.

1) INDUSTRIAL APPLICABILITY

For the assessment of the present claims 1 and 2 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

2) DOCUMENTS USED IN EXAMINATION

The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: WO 01/15673 A

D2: XP000933411, MEDICAL LETTER ON DRUGS AND THERAPEUTICS, vol. 42, no. 1071, pages 11-12

D3: XP009033957, REVUE MEDICALE DE LIEGE, vol. 55, no. 10, 2000, pages 957-959

D4: XP009033969, HEART DRUG, KARGER, vol. 2, no. 2, pages 93-104

Unless indicated otherwise reference is made to the passages considered relevant in the search report.